



MEMORANDUM

July 8, 2004

TO: CRWCD BOARD OF DIRECTORS

FROM: CHRIS TREESE

RE: Federal Affairs

This year I will prepare a “progressive memo” on federal affairs for the Board’s quarterly meetings. Since federal issues tend to remain active longer than state issues, certainly more so than state legislative issues, creating separate memos for each federal issue becomes redundant and ineffective. This progressive memo will look much like Eric’s General Manager’s report (but not as long) with new materials and updates appearing in bold in future memos.

GENERAL APPROACH:

Washington, D.C. and federal water issues represent a tremendous opportunity to spend vast sums of River District money. The River District has chosen not to do so. At the same time, DC and federal water issues are too important to dismiss or ignore. Accordingly, staff monitors federal issues through a variety of media. We will work directly with Colorado’s delegation and others to be a resource to the delegation and to ensure that River District issues are adequately addressed. Additionally, we work with state, regional, and national organizations, such as NWRA, WESTCAS, NESARC, and others to leverage our positions through others with similar interests but greater resources and a more active DC presence.

OUTLOOK:

This is, of course, an election year. Accordingly, federal activities will be both colored by and subordinated to election priorities.

Congress returns this month with eight of thirteen current year Appropriations bills still pending.

(The new fiscal year began October 1, 2003.) The remaining Appropriation bills are expected to receive immediate attention. Of course, there will also be 13 FY '04 Appropriations bills requiring attention for the following fiscal year. Congress passed an omnibus spending bill to address the individual appropriations bills that hadn't made it through the process on January 22. The bill provides a \$6 billion increase in spending for 11 government agencies and the District of Columbia. It includes a 4.1% pay increase for federal workers. It also allows for relaxation of overtime rules, a contentious issue that both houses had gone on record as opposing. This year's January passage of the omnibus spending bill is one month earlier than last year, but long after the October 1 beginning of the current federal fiscal year. Attention now turns to the President's FY 05 budget and the Congressional appropriations process for the coming year. See FY 05 Budget below.

With the Republican majorities in both the House and Senate in single digits, significant and controversial legislation is unlikely to pass this year, at least not before the November elections. However, the White House is expected to push Congress to pursue fiscal stimulus legislation and other initiatives to ensure that the President's agenda remains in the public eye through November.

As the August recess and the November elections loom, less and less is expected to be passed by this Congress at least before the elections. The likelihood of a lame duck session is almost assured as is an omnibus spending bill as opposed to individual agency appropriations bills.

RECENT DEVELOPMENTS:

Healthy Forests Bill

Congressman McInnis successfully shepherded his Healthy Forests Initiative (H.R. 1904) through the Congress. The President signed it into law December 3, 2003. This bill will "improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes."

NEW EPA ADMINISTRATOR:

President Bush appointed Utah Governor Mike Leavitt to head the EPA and the Senate confirmed him. Leavitt is widely considered a moderate Republican who has been very popular in Utah. Leavitt is one of the principal architects of the *en libra* principles advocating collaborative decision-making regarding resource stewardship.

Black Canyon of the Gunnison:

Congress approved and the President signed into law legislation adding roughly 10,000 acres to the

Black Canyon of the Gunnison Gorge National Park and the Conservation Area. The additional lands will come from existing federal holdings and from willing sellers. The legislation included language requested by the Uncompahgre Valley Water Users to address land ownership and access issues related to their facilities. There were no other water implications to this legislation. The additional lands are required to be managed for multiple use.

Clean Water Act/ §319 Guidelines

EPA has issued guidelines describing the process and criteria for awarding non-point source (NPS) grants. Funding for Section 319 has more than doubled in the past five years. "The guidelines are intended to clarify, consolidate, and shorten previously issued guidance."

Water Funding Bill and Drought Relief:

The FY '04 Energy and Water Appropriations bill has been signed into law. The bill authorizes the Commissioner of the Bureau of Reclamation to enter into "grants, cooperative agreements, and other agreements with irrigation or water districts to fund up to 50% of the cost of planing, designing, and constructing improvements that will conserve water, increase water use efficiency, or enhance water management through measurement or automation at existing water supply projects."

Animas-LaPlata Project:

Updated cost estimates pushed the projected cost of the scaled-down project to \$500 million. A companion revised construction schedule now projects completion in 2011. The cost increases were the subject of considerable public debate, including a Congressional field hearing, this winter. The A-LP project received a \$52 million appropriation in the President's FY '05 budget.

FY 05 Budget:

At the beginning of February, President Bush sent Congress a \$2.4 trillion election-year budget featuring big increases for defense and homeland security and a record \$521 billion deficit. Other departments including Interior, Ag, and EPA will receive cuts or increases less than the rate of inflation.

In a written statement to the House Appropriations Water and Energy Subcommittee Secretary Gale Norton, highlighted the 2025 initiative. She stated, "A Water 2025 increase of \$12.5 million for the Bureau of Reclamation will build on the 2004 Western Water Initiative, providing a total of \$20.0 million to retrofit and modernize existing facilities, promote conservation and more efficient use of existing water supplies, improve water management by using excess capacity at Federal facilities, and facilitate research to provide alternative water supplies."

Of concern in the President's budget is a reduction of 99% of the Recovery Program's administrative and research budget. Recovery Program partners ran the tin cup circuit last month and are confident

that Congress will restore these funds. This cut, however, was consistent with other recovery effort reductions. Disconcerting was a companion increase in the listing budget for the US Fish & Wildlife Service. Interior officials have explained that this budget increase is driven primarily by court decisions.

Funding under the Abandoned Mine Land Act received a \$53 million increase, and both the Healthy Forests and Wildland Fire Program received increases. The Payments in Lieu of Taxes program also received a \$1.3 million increase.

Selenium: The River District is currently active in attempts to appropriate funds for selenium control, mitigation, and study. As a result of last month's actions by the Colorado Water Quality Control Commission, Colorado now has more than 7600 miles of streams listed as water quality impaired under Section 303(d) of the Clean Water Act. Almost 90% of these streams are listed, in whole or in part, because of elevated selenium concentrations. While not suggesting that the Commission did anything improper, the numbers indicate the need for additional study on the problem and its possible remediation.

Accordingly, we have been advocating for: 1.) restoration of funding to the National Irrigation Water Quality Improvement Program (NIWQIP) which was zeroed out in the President's budget, 2.) another year of funding for the Uncompahgre Valley Water Users' on-the-ground selenium mitigation efforts (\$750,000) and 3.) a five-year, \$10 million appropriation to study Colorado's elevated selenium concentrations, its impacts on Colorado's unique aquatic habitats, and possible selenium mitigation efforts. A copy of Eric's letter to Senator Campbell on this study is attached.

Senator Allard amended the Water Resources Development Act (WRDA) to include authorization for \$5 million for selenium studies and remediation/mitigation demonstration projects in Colorado. WRDA applies exclusively to the Army Corps of Engineers, which frankly isn't our first choice for sponsorship of these studies and projects, but it's a bird-in-the-hand world. We are exploring other legislative strategies to transfer this authorization to the USGS.

ISSUES BEING MONITORED:

Tamarisk:

There are several bills working their way through Congress which would provide funding for tamarisk and Russian olive assessment and removal. These bills enjoy bi-partisan support and stand a good chance of passage, notwithstanding the fact that they represent new funding requests for a

new program. H.R. 2707 passed the House March 3. This bill provides authorization for \$19 million annually for 2005- 2009 for tamarisk and Russian olive control and \$5 million next year for assessment of the geographic extent of the problem and quantification of the water losses. Passage of S. 1516 by Senator Domenici is the next step. It passed the Energy and Natural Resources Committee February 11. S. 1516 passed the full Senate May 19. Senator Allard's office informs me that S. 1516 will be passed by suspension thus avoiding a conference committee or need for any other reconciliation between S. 1516 and H.R. 2707. The real trick, as always, will be future appropriations, but having this bill authorizing the appropriations significantly improves our prospects. **Both bills passed under suspension.**

Good Samaritan:

In late September Senator Campbell introduced a Good Samaritan Abandoned and Inactive Mined Lands Remediation Act (S. 1660) with Senators Allard, Ensign (R-NV), Hatch (R-UT) and Reid (D-NV). It would protect parties against liability for environmental cleanup efforts when there is or may be a discharge of pollutants into waters of the U.S. It authorizes the EPA to issue a remediation permit if an applicant meets certain requirements. The bill has been referred to the Environment, Public Works Committee. This legislation is similar to that introduced by Congressman Mark Udall (H.R. 504) in the House earlier in 2003 and reviewed with the board at that time.

Western Waters and Surface Owners Protection Act:

Congressman Mark Udall introduced H.R. 3698 whose short title is "Western Waters and Surface Owners Protection Act." This act is intended to, "provide for the protection of water resources and surface estate owners in the development of oil and gas resources, including coalbed methane." Its applicability is limited to severed estates where the federal government owns the subsurface mineral rights and is considering leasing those rights for development. Its water requirements include: a.) replacement of water supplies that are affected by drilling and production operations; b.) reinjected water must be returned to the same aquifer from which it was produced or one of lesser quality, and c.) compliance with all federal and state water discharge laws. This last point has been the subject of contention and litigation across the West. This bill has been reintroduced as H.R. 1470 with changes to address concerns of the Colorado Farm Bureau. Colorado Farm Bureau is now supporting H.R. 1740, but Colorado's Farm Bureau is alone in its support among the nations' state Farm Bureaus. This bill has more substance regarding surface owners than water, but it does have water provisions which are generally consistent with Colorado water law and water quality practices (e.g., requiring an NPDES permit for drilling water discharges).

ESA:

Senator Domenici (R-NM) attached a rider to an appropriations bill that would effectively overrule

the 10th Circuit Court decision regarding the silvery minnow, prohibiting releases from the San Juan-Chama Project for minnow recovery efforts.

House Resources Committee Chairman, Richard Pombo, has set reauthorization and reform of the Endangered Species Act as a priority for this year's session of Congress. From recent press reports, his reform priorities are focused on requiring sound science, publication of recovery goals at the time of listing, and greater state and local government involvement in administration and decision-making.

The Act celebrated its 30th anniversary last month with the requisite debate on its merits and shortcomings.

A December 31, 2003 federal Claims Court decision recognized that a government "taking" occurred when federal wildlife officials withheld water otherwise guaranteed to farmers to protect endangered fish. In what may be a landmark case, Judge Wiese awarded \$26 million ruling that the government's halting of water deliveries constituted a "taking" or intrusion on the farmers' private property rights. The case stemmed from the government's efforts to protect endangered winter-run chinook salmon and threatened delta smelt between 1992 and 1994 by withholding billions of gallons from farmers in California's Kern and Tulare counties. The government has not decided whether to appeal. Similar cases are pending in Washington state and New Mexico for the endangered silvery minnow.

In a follow-up to the Tulare case described above, two California water districts, Stockton East Water District and Central San Joaquin Water Conservation District, and the County of San Joaquin, City of Stockton, and California Water Service Company, have filed suit against the United States seeking \$500 million in damages and just compensation for the federal Bureau of Reclamation's failure to deliver water to them from New Melones reservoir since 1993. The suit was filed in the U.S. Court of Federal Claims in Washington, D.C.

Sen. Gordon Smith (R-OR) introduced S. 2009 to amend the Endangered Species Act of 1973 to require the Secretary of the Interior to give greater weight to scientific or commercial data that is empirical or has been field-tested or peer-reviewed. It was assigned to the Senate Committee on Environment and Public Works. Congressman Greg Walden (R-OR) has introduced companion legislation in the House to Senator Smith's ESA reform legislation. H.R. 1662. Neither bill has received a hearing.

The scientist who is credited with discovering the Preble's Meadow Jumping Mouse agrees that recent research invalidates his 1954 findings. In an e-mail released to a congressional committee,

Dr. Philip H. Kruttsch endorsed a recent study that concludes the Preble's Meadow Jumping Mouse is genetically identical to the bear lodge jumping mouse, a common rodent found throughout two-thirds of North America.

At the end of April, Assistant Secretary of the Interior Craig Manson announced revised regulations to encourage private landowners to undertake voluntary conservation measures on their property to benefit threatened, endangered and at-risk species. The new regulations are designed to improve the U.S. Fish and Wildlife Service's "Safe Harbor" and "Candidate Conservation Agreements with Assurances" policies by providing clearer definitions and more certainty to property owners.

"Twenty-First Century Water Commission"

Congressman Linder (R-GA) is again pursuing a blue ribbon, nationwide water commission. However, this session he has considerably more support. H.R. 135 passed the House this past fall. Congressmen McInnis and Beauprez are co-sponsors. The bill has been referred to the Senate Environment and Public Works Committee. **The Senate Committee has still not acted.**

This bill would create a nine-member commission: 5 appointed by the President, 2 by the House and 2 by the Senate. One significant difference between this session's bill and last session's is that the membership this time is not dominated by federal officials. The commission would be charged with examining and reporting on ways to study and develop recommendations for a comprehensive water strategy to address the nation's future needs for freshwater resources. A final report is required in three years.

Energy Bill

The Energy Bill stalled last year in the Senate following relatively brisk passage in the House. With other, high profile legislation passed last year, notably Medicare reform, and the highly controversial nature of the Energy Bill, final passage this year is unlikely. However, there are relatively small elements of the bill which are important to the River District. Ritchard Dam doesn't meet the current requirements of an "exempt" hydroelectric facility. A simple updating of the definition of qualifying structures is included in the current bill.

"The Reclamation Rural Water Supply Act"

Senator Domenici (R-NM) introduced S. 1732 to establish a "rural water supply program in Reclamation state to provide a clean, safe, affordable, and reliable water supply to rural residents." Federal cost share on eligible projects is up to 75%. It has been assigned to the Senate Committee on Energy and Natural Resources.

WATER SUPPLY RELIABILITY & ENVIRONMENTAL IMPROVEMENT ACT

Water and Power Subcommittee chairman, Ken Calvert (R-CA), introduced H.R. 2828 directing the Secretary of the Interior to undertake a competitive grant program to: (1) investigate and identify opportunities for studying, planning, and designing water resources activities; and (2) construct demonstration and permanent facilities or implement other programs, projects, and activities which benefit water storage; conveyance; water use efficiency; water transfers; groundwater recharge; integrated regional water management plans; ecosystem restoration; watersheds; water quality; and diversification of water supplies.

The bill authorizes \$50 million for FY '04 and \$100 million thereafter. No more than 30% of the amount available can be allocated to one state. The Water and Power Subcommittee has held hearings on the bill, but no vote.

This bill passed Committee and is scheduled for floor vote prior to the Board meeting.

PSOP

The Southeastern WCD's bill to authorize reoperations of the Fryingpan-Arkansas project and feasibility studies of enlarging Pueblo and Turquoise Reservoirs has still not been introduced. Congressman Hefley has a draft bill ready, but is still awaiting resolution of separate negotiations with Aurora and the Colorado River District regarding their respective concerns. Eric mentioned his discussions with the Southeastern board in his memo and will discuss those further at the April meeting. A tentative meeting is set among the River District and Southeastern and Colorado Springs for April 23. Again, our concern is not with Southeastern or the transmountain diversion of federal water through the Fry-Ark project's facilities, but with how reoperations may facilitate additional non-federal TMD water diversions (e.g., Twin Lakes and Homestake) using the federal project's facilities.

Congressman Hefley introduced H.R. 4691 two weeks ago; however, it is still not printed and available on the Internet. We believe the sections affecting western Colorado are substantially unchanged. Beauprez, Tancred, and Musgrave are co-sponsors. Congressmen McInnis and Udall along with Senators Allard and Campbell are opposing the bill or are withholding support pending resolution of Western Colorado's concerns with the legislation. Additionally, Candidates Ken Salazar, John Salazar, Gregg Rippey, Matt Smith, and Greg Walcher have all stated their opposition or reluctance to support this legislation at this time.

We have a technical meeting scheduled next week with the proponents for this legislation to

better define our concerns and explore language to resolve our concerns. Eric will likely provide an update of that meeting.

Clean Water Act

The Army Corps of Engineers and the National Wildlife Federation agreed to a settlement recently that would make irrigation canals and drainage ditches connected to navigable or interstate waterways in Oregon and Washington subject to the Clean Water Act.

NWF agreed to the settlement this week after threatening to sue the Corps three months ago for allowing Costco Wholesale to fill in seven acres of wetlands in Washington's Clark County to build a parking lot.

Other Western states -- including Alaska, Arizona, California, Hawaii, Idaho, Montana and Nevada -- will also adopt similar regulations, said corps spokesman Dave Hewitt. The Corps office in Washington, D.C., will also examine this agreement and court rulings around the country to determine if the regulations should be adopted as a nationwide policy.

In the last three years, several federal appeals courts have ruled that the Corps should regulate ditches and canals. The Supreme Court has refused to hear developers' appeals on any of those cases.

The Corps currently has no standing policy on the issue.

Miccosukee

The Miccosukee Tribe recently filed a Petition for Rehearing with the Court pursuant to S. Ct. R. 44. In it, they ask the Court to correct two statements in the opinion, that is, (1) to reflect that the Tribe argued a permit would be required even if the water is moved within the same water body, and (2) to reflect that the Tribe defended the lower courts' decision that the water bodies are distinct. The Court will conference on the Tribe's Petition on May 13, 2004.